

Petriman, Viorica

From: Siegel, Joseph
Sent: Tuesday, September 16, 2014 1:22 PM
To: Villatora, Liliana
Subject: FW: Greenidge Reactivation Comments letter
Attachments: EPA Comments Greenidge Reactivation (Sept. 16 2014) .pdf

Hi Liliana,

I'm giving you a heads up on a letter issued today(attached) that I have been working on with Viorica and Steve concerning the Greenidge power plant.

Ex. 5: Attorney-Client/Work Product/Deliberative

Best regards,
Joe

From: Majette, Yolanda
Sent: Tuesday, September 16, 2014 12:35 PM
To: Riva, Steven; Petriman, Viorica; Siegel, Joseph
Subject: Greenidge Reactivation Comments letter

Please see the attached letter.

Thanks!

Yolanda Julec Majette
Clean Air & Sustainability Division
Air Programs Branch
USEPA - Region 2
290 Broadway 25th floor
New York, NY 10007-1866
(212) 637-3740 Main
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“Coming together is a beginning. Keeping together is progress. Working together is success.”
Henry Ford



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 16 2014

Mr. Thomas Marriott
Regional Air Pollution Control Engineer
New York State Department of Environmental Conservation, Region 8
6274 East Avon-Lima Road
Avon, NY 14414

RE: PSD Applicability to the Reactivation of Greenidge Generating Station, located in
Dresden, Yates County, New York

Dear Mr. Marriott:

On July 31, 2014, I sent you a letter regarding the potential applicability of the Prevention of Significant Deterioration (PSD) regulations to the Greenidge Generating Station Unit 4 (Greenidge or facility) upon reactivation. The U.S. Environmental Protection Agency Region 2 Office's letter focused entirely on whether the reactivation of Greenidge would render the facility subject to PSD as a major modification. However, in our letter, we did not address the question of whether Greenidge's reactivation would constitute a new source subject to PSD review because NYSDEC was already evaluating whether the plant had been permanently shutdown.

Subsequently, we received and examined additional materials (e.g., correspondence between Greenidge's owners and DEC, other state entities, U.S. Bankruptcy Court, and U.S. District Court for Western District of New York) related to Greenidge's shutdown, which were included in a letter from the Sierra Club's dated August 5, 2014¹. We wish to bring to your attention some relevant factual information that was contained in those materials because they might be important to your determination of whether or not Greenidge had been permanently shut down in 2011.

According to the EPA reactivation policy, after two years of shutdown, a facility is presumed to be permanently shutdown, unless the owners of the shutdown facility could document their continuous intent, throughout the shutdown, and concrete plans to restart the facility in the reasonably foreseeable future. The reactivation of a permanently shutdown facility is treated as an operation of a new source for the purposes of the PSD review.

Based on our review, these additional materials appear to contain information, which may indicate that there was not a continuous manifestation of intent to reactivate the facility throughout the shutdown period by two of the Greenidge's owners, AEE2 and GMMM. We recommend that you examine the following relevant information:

¹ EPA notes that the August 5, 2014 Sierra Club letter was also sent to DEC

AES EE2, LLC (AEE2)

- On September 18, 2012², at about 1 year and a half after entering shutdown (which occurred on March 18, 2011), AEE2, Greenidge's owner at that time, wrote to New York Public Service Commission, New York Independent System Operator, and New York State Electric and Gas Corporation, to inform them that it "intends to permanently retire Greenidge Unit 4 facility on September 21, 2012 and soon thereafter transfer the facility to a salvage company to dismantle and salvage the facility." In the same month, AEE2, in its September 19, 2012³ motion filed with the U.S. Bankruptcy Court, seeking authorization to sell Greenidge to GMMM Holdings I, LLC (GMMM), stated that GMMM intends to permanently retire Greenidge, salvage or scrap the equipment, and demolish the buildings so the site eventually can be redeveloped.
- On October 4, 2012⁴, AEE2, in its Declaration to the U.S. Bankruptcy Court, stated that after an extended marketing process, since they received no credible proposals for acquisition of Greenidge as an operating power plant, they concluded that the highest and best value obtainable for Greenidge would be a transaction to sell it for salvage, scrap, and redevelopment value.
- On November 28, 2012⁵, AEE2 sent a letter to DEC asking for the termination of its title IV and V air permits, because they entered into an Asset Purchase Agreement to sell Greenidge to GMMM and "GMMM intends to salvage and scrap Greenidge, so that Greenidge will no longer be capable of operating or emitting pollutants."
- On December 18, 2012⁶, at AEE2's request, the U.S. District Court for Western District of New York terminated the 2005 Clean Air Act (CAA) Consent Decree. The court's order states that Greenidge is no longer operating and has been permanently retired, and GMMM intends to salvage and scrap Greenidge, so that Greenidge will no longer be capable of operating or emitting pollutants.

GMMM

- In January 24, 2013⁷, GMMM (which purchased Greenidge from AEE2 on December 28, 2012) sent a letter to DEC, requesting DEC to rescind AEE2's earlier termination of the facility's title IV and V air permits, and to approve the transfer of these permits from AEE2 to GMMM. In its letter, GMMM stated, "it was contemplated that Greenidge was being purchased for scrap and salvage only and there was no thought of reopening the facility for operation... subsequent to the acquisition of Greenidge, GMMM discovered that there is substantial interest to reopen Greenidge as an operating facility...."

² The AEE2's September 18, 2012 letter is identified in the Sierra Club submittal as Exhibit C

³ The AEE2's September 19, 2012 letter is identified in the Sierra Club submittal as Exhibit D

⁴ The AEE2's October 4, 2012 Declaration is identified in the Sierra Club submittal as Exhibit G

⁵ The AEE2's November 28, 2012 letter is identified in the Sierra Club submittal as Exhibit H

⁶ The U.S. District Court for Western District of New York's Order dated December 18, 2012 is identified in the Sierra Club submittal as Exhibit I

⁷ The GMMM's January 24, 2013 letter is identified in the Sierra Club submittal as Exhibit L

- In January 30, 2013⁸, DEC informed GMMM that the termination of the title IV and V air permits cannot be rescinded, and if GMMM wishes to operate Greenidge, then GMMM would need to file new title IV, and V permit applications. However, GMMM never filed a new permit application, instead, in March of 2013, GMMM engaged in negotiations with Atlas Holdings, LLC (Atlas) for the sale of Greenidge, which, on February 28, 2014 purchased Greenidge from GMMM.

These facts and statements suggest that AEE2 and GMMM did not manifest a continuous intent and concrete plans to restart facility. On the other hand, based on the record, Atlas, the current owner of Greenidge, has been consistent in its intent and concrete plans to reactivate Greenidge, although it did not become the owner of Greenidge until almost three years after shut down of the facility.

In conclusion, EPA, through this letter, is seeking to bring this factual information to your attention as you continue your in-depth analysis as to whether the reactivation of Greenidge would be subject to PSD as a new source. We recognize that reactivation determinations are fact sensitive and nuanced and that you are no doubt reviewing other information in evaluating this matter. One additional set of documents you may wish to acquire is detailed maintenance records of the three owners subsequent to the 2011 shutdown.

If you have any questions or wish to discuss specific issues regarding this letter, please contact me at (212) 637-4074, or have your staff contact Ms. Viorica Petriman at (212) 637-4021.

Sincerely,



Steven C. Riva, Chief
Permitting Section
Air Programs Branch

cc: Robert Stanton (e-mail)
Director, Bureau of Stationary Source
Division of Air Resources, NYSDEC
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Albany, NY 12233-3258

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⁸ The DEC's January 30, 2013 letter is identified in the Sierra Club Submittal as Exhibit M

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Petriman, Viorica

From: Villatora, Liliana
Sent: Tuesday, September 16, 2014 1:49 PM
To: Siegel, Joseph
Subject: RE: Greenidge Reactivation Comments letter

Can we talk about this?

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